

<p><b>BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO</b> 1313 Sherman Street, Room 315 Denver, Colorado 80203</p> <hr/> <p>Petitioner:</p> <p><b>AFFINITY GAMING BLACK HAWK LLC- (GOLDEN MARDI GRAS CASINO),</b></p> <p>v.</p> <p>Respondent:</p> <p><b>GILPIN COUNTY BOARD OF EQUALIZATION.</b></p>	<p><b>Docket No.:62537</b></p>
<p><b>ORDER</b></p>	

**THIS MATTER** was heard by the Board of Assessment Appeals on January 30, 2014, James R. Meurer, Debra A. Baumbach and Brooke B. Leer presiding. Petitioner was represented by Mark W. Gerganoff, Esq. Respondent was represented by James Petrock, Esq. and Bradford R. Benning, Esq. Petitioner is protesting the 2013 actual value of the subject property.

Subject property is described as follows:

**The Golden Mardi Gras Casino, 320 Main Street, Black Hawk, CO  
Gilpin County Schedule No. R003977**

The subject property is a multi-level Class A casino built on a reinforced concrete foundation with reinforced concrete exterior walls. The building has a brick fascia and a metal roof. The building has a small basement, two levels of casino areas, an office/restaurant on the 3<sup>rd</sup> level and mechanical areas on the 4<sup>th</sup> and 5<sup>th</sup> levels. The gross building area is 68,444 square feet. A parking structure is connected via a walkway to the casino but is not a part of this valuation. The site area is 38,762 square feet and the year of construction is 1999. The zoning is Planned Unit Development-Underlying Gaming Zoning.

Petitioner did not present a report or data suggesting an actual value for the subject property for 2013. On the Petition to the Board of Assessment Appeals, Petitioner's estimate of value was \$14,410,000, however this value was not presented at the hearing. Petitioner chose to critique the County's valuation. Gilpin County, Respondent, presented its case first and then Petitioner, Affinity-Mardi Gras Casino, questioned Respondent's witnesses.

Respondent presented an appraisal report prepared by Richard Jortberg, MAI. Mr. Jortberg testified to the value conclusions in the report. Ms. Lynn Crist, President of The Morrison Group, who aided Mr. Jortberg with the reproduction cost new of the subject property, also testified.

The testimony presented was primarily about the Cost Approach. Mr. Jortberg testified that limited land sales took place within the subject area during the valuation period. The land value conclusion was \$6,600,000 or \$170.00 per square foot based on a site area of 38,752 square feet. The reproduction cost new as estimated by Ms. Crist was based on data she gathered from the subject's architect, contractors and property owners. Ms. Crist testified to a range of cost new for the subject of \$29,100,000 to \$31,500,000. Mr. Jortberg used Ms. Crist's cost new data and concluded at a cost new of \$30,000,000 for the subject.

Mr. Jortberg applied physical depreciation of 12% based on data from the Marshal Valuation Service. Mr. Jortberg's conclusion after depreciation and the land value added was \$33,000,000 or \$482.00 per square foot based on 68,444 square feet of the subject building.

The sales comparison approach was considered as was the income approach. The data was limited for the sales comparison approach and no value was concluded. A value from the income approach was estimated but it included goodwill as well as personal property. A Stabilized Enterprise Value of \$72,500,000 was estimated but this value included three other properties, the Golden Gate Casino, Golden Gulch Casino and the parking structure. This analysis used the EBITDA (earnings before interest, taxes, depreciation and amortization) which was obtained from financial information submitted for tax purposes by the owner. The approach relied on the residual value of the subject property from the cost approach conclusion of \$33,000,000. According to testimony, it was not an approach that stood on its own merit in estimating the actual value of the subject real property.

The subject property sold as an assemblage in February 2012, within the valuation period. The sale included five parcels, surface parking and a parking garage. This sale was presented in Respondent's appraisal at \$57,847,396 or \$183.00 per square foot. It was reportedly an arm's length sale of a multi-property assemblage. The appraiser, Mr. Jortberg, indicated in his report the subject value on a per-square foot basis would be higher than \$183.00 because this per square foot price included the garage areas that would be less valuable than the casino/gaming areas. This subject sale was referred to but little weight was given to it because it was an assemblage.

The final estimate of the market value for the subject property as of June 30, 2012 was \$33,000,000 based on the appraisal prepared by Respondent's witness. The value was based solely on the Cost Approach. However, Respondent deferred to the assigned value of \$28,849,110 for the subject property based on the Gilpin County Assessor's Valuation of the property for tax year 2013.

Petitioner's witness was Mr. Patrick Sullivan, Sullivan Valuation Services. Mr. Sullivan did not present a report or actual value for the subject, but rather discussed what he felt was an appropriate method of valuation for the subject casino property, and what he thought Respondent did not do well in his appraisal report. Mr. Sullivan did not think the cost approach was a good method to use in the valuation because of the limited land data and that the current cost less depreciation of the subject was very arbitrary. He also thought the physical depreciation percentage Respondent used in his analysis at 12% was low and that some functional obsolescence was appropriate regarding the parking garage.

He further suggested that the best method of valuing the subject would be using the EBITDA. He suggested that this is a valid method to reach an NOI or net operating income for the subject real property and then capitalize it. He suggested that values for the personal property, goodwill and management fees could be estimated and the residual remaining would be for the real property. He did not present data or testimony regarding a market value for the subject based on this method but felt that the County was responsible to provide a better application of this method to value the subject that did not use the cost approach as the residual value remaining to the real property. Mr. Sullivan's testimony would have been more effective if he had presented a report and actual value for the subject using the EBITDA method rather than just stating that it was the best method to use.

The Board concluded that the report submitted by Respondent was adequate and the testimony presented by Respondent's two witnesses, Mr. Jortberg and Ms. Crist, was professional and thorough. Although Mr. Sullivan presented testimony on how the gaming industry determines or should determine real property values, the Board was not persuaded by Petitioner's ideas as to the appropriate value determination methodology, as those ideas require significant research and financial information on the property being appraised. Mr. Sullivan's testimony would have been more convincing if an analysis for the subject using this approach would have been performed and presented to the Board.

The Board finds that Petitioner presented insufficient probative evidence and testimony to prove that the subject property was incorrectly valued for tax year 2013.

**ORDER:**

The petition is denied.

**APPEAL:**

If the decision of the Board is against Petitioner, Petitioner may petition the Court of Appeals for judicial review according to the Colorado appellate rules and the provisions of Section 24-4-106(11), C.R.S. (commenced by the filing of a notice of appeal with the Court of Appeals within forty-nine days after the date of the service of the final order entered).

If the decision of the Board is against Respondent, Respondent, upon the recommendation of the Board that it either is a matter of statewide concern or has resulted in a significant decrease in the total valuation of the respondent county, may petition the Court of Appeals for judicial review according to the Colorado appellate rules and the provisions of Section 24-4-106(11), C.R.S. (commenced by the filing of a notice of appeal with the Court of Appeals within forty-nine days after the date of the service of the final order entered).

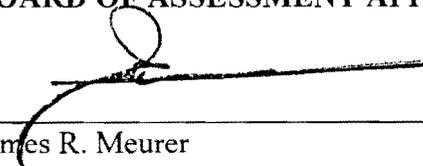
In addition, if the decision of the Board is against Respondent, Respondent may petition the Court of Appeals for judicial review of alleged procedural errors or errors of law within thirty days of such decision when Respondent alleges procedural errors or errors of law by the Board.

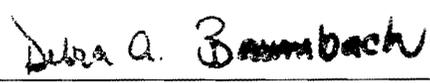
If the Board does not recommend its decision to be a matter of statewide concern or to have resulted in a significant decrease in the total valuation of the respondent county, Respondent may petition the Court of Appeals for judicial review of such questions within thirty days of such decision.

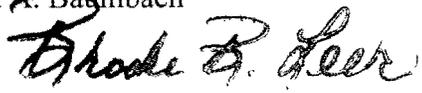
Section 39-8-108(2), C.R.S.

**DATED and MAILED** this 11th day of March, 2014.

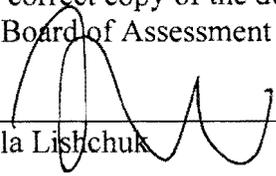
**BOARD OF ASSESSMENT APPEALS**

  
James R. Meurer

  
Debra A. Baumbach

  
Brooke B. Leer

I hereby certify that this is a true and correct copy of the decision of the Board of Assessment Appeals.

  
Milla Lishchuk

